

# HellerEhrman LLP

February 5, 2008

*Via Electronic Filing and Hand Delivery*

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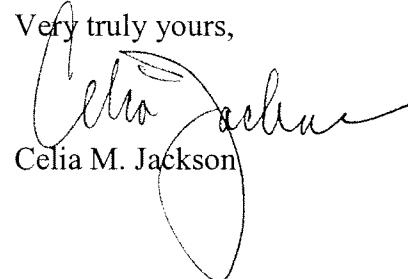
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The Hon. Saundra Brown Armstrong  
United States District Court  
Northern District of California  
1301 Clay Street,  
Courtroom 3, Third Floor  
Oakland, California 94612

**Re: *LensCrafters, Inc., et al. v. Liberty Mutual Fire Insurance Company, et al.***  
**Case No. C-07-02853 SBA**

Dear Judge Armstrong:

We write to inform the Court that on February 4, 2008, the Honorable Richard A. Kramer issued an Order (1) Preliminarily Approving Class Action Settlement, (2) Conditionally Certifying a Settlement Class, (3) Approving Form and Methods of Class Notice, and (4) Scheduling Final Approval of Settlement in the litigation *Snow, et al. v. LensCrafters, Inc., et al.*, San Francisco Superior Court Case No. CGC-02-4-554. A copy of the Order is attached. As we have previously informed the Court on January 31, given the court's preliminary approval of the *Snow* settlement, we will be filing shortly either a stipulation or motion to dismiss plaintiffs' claims against defendants Liberty Mutual Fire Insurance Company, Executive Risk Specialty Insurance Company and Westchester Fire Insurance Company.

Very truly yours,  
  
Celia M. Jackson

Enclosure

cc: Alexander F. Stuart, Esq.  
Monique Fuentes, Esq.  
Robert Dennison, Esq.  
Chip Cox, Esq.  
Amy E. Rose, Esq.

**ENDORSED  
FILED**  
San Francisco County Superior Court

FEB 04 2008

**GORDON PARK-LI, Clerk**  
BY: THOMAS K. ROGUE  
Deputy Clerk

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15 650 California Street, 26th Floor  
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**14 Attorneys for Plaintiffs**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**COUNTY OF SAN FRANCISCO — UNLIMITED JURISDICTION**

18 MELVIN GENE SNOW, individually and on  
19 behalf of all others similarly situated; SABRINA  
20 HUGHES, individually and on behalf of all others  
similarly situated.

No. CGC-02-405544

21 Plaintiffs,

22 v

23 LENS CRAFTERS, INC., et al.

24 Defendants

~~PROPOSED~~ ORDER (1)  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT, (2)  
CONDITIONALLY CERTIFYING A  
SETTLEMENT CLASS, (3)  
APPROVING FORM AND  
METHODS OF CLASS NOTICE,  
AND (4) SCHEDULING FINAL  
APPROVAL OF SETTLEMENT

Dept.: 304

Judge: Hon. Richard A. Kramer  
Complaint Filed: March 12, 2002

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[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, CONDITIONALLY CERTIFYING  
SETTLEMENT CLASS, APPROVING FORM & METHODS OF NOTICE AND SCHEDULING FINAL APPROVAL OF SETTLEMENT

1           WHEREAS, this Court has reviewed the Settlement Agreement and Release  
 2 ("Agreement") made by and among Defendant LensCrafters, Inc., an Ohio corporation,  
 3 ("LensCrafters"), Defendant EYEXAM of California, Inc., a California corporation  
 4 ("EYEXAM") (collectively "Defendants") and Plaintiffs Melvin Gene Snow and Sabrina Hughes  
 5 Lochner, in their individual capacities and as representatives (collectively "Class  
 6 Representatives") of the "Settlement Class," as defined below, in the action *Snow et al. v.*  
 7 *LensCrafters et al.*, San Francisco Superior Court No. CGC-02-405544 (the "Action"), together  
 8 with all exhibits thereto, the record in the Action, and the arguments of counsel;

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IT IS HEREBY ORDERED AS FOLLOWS:

11           1. All terms and definitions used herein have the same meanings as set forth in the  
 12 Agreement.

13           2. The proposed settlement set forth in the Agreement is hereby preliminarily  
 14 approved as being within the range of reasonableness such that notice thereof should be  
 15 given to members of the Settlement Class (as defined in the following paragraph).

16           3. Pursuant to California Code of Civil Procedure section 382, the following  
 17 Settlement Class is provisionally certified for purposes of settlement only:

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All persons who had their eyes examined at an EYEXAM office  
 located in California and purchased eyewear on the same day from  
 LensCrafters during the period from March 12, 1998 to the date of  
 the Court's preliminary approval of the Settlement.

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Inherent in the Court's provisional certification of the Settlement Class are findings that  
 the Settlement Class is ascertainable; that its members are too numerous to practicably be joined;  
 that the Action raises common legal and factual questions; that the Class Representatives' claims  
 are typical of the claims of the Settlement Class as a whole; that the Class Representatives and  
 Settlement Class Members share a community of interest in the Action; that neither the Class  
 Representatives nor Class Counsel have interests adverse to the Settlement Class, and that Class  
 Counsel are competent and experienced; that common questions predominate over questions

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1     affecting only individual Settlement Class Members; and that this Action and this settlement are  
 2     appropriate means for resolving the Settlement Class Members' claims expeditiously and  
 3     economically.

4                 4. Class Counsel and Class Representatives are hereby appointed to represent the  
 5     Settlement Class. The following attorney is hereby appointed as Class Counsel: Matthew D.  
 6     Davis of Walkup, Melodia, Kelly & Schoenberger. The following persons are hereby  
 7     appointed as Class Representatives: Melvin Gene Snow and Sabrina Hughes Lochner.

8                 5. This Court's certification of the Settlement Class and findings incident thereto  
 9     shall be solely for settlement purposes. Certification of the Settlement Class shall be vacated  
 10    and shall have no effect in the event that the Agreement is not finally approved by this Court  
 11    or otherwise does not take effect. In the event the Court's approval of the Agreement or  
 12    certification of the Settlement Class is disapproved, reversed, vacated or terminated, neither  
 13    the Settlement Agreement nor the findings in this Order shall affect the rights of the parties to  
 14    take action in support of or in opposition to class certification or to prosecute or defend this  
 15    action, or this Court's ability to grant or deny certification for litigation purposes. If this  
 16    provisional class certification order is vacated, the parties shall all be restored to the *status*  
 17    *quo ante* as of the date preceding the date of this Order.

18                 6. The Category 1 Notice and Claim Form, Category 2 Notice and Claim Form  
 19    (collectively the "Notice and Claim Form"), and the Full Notice of Pendency and Proposed  
 20    Settlement of Class Action ("Full Notice"), which are attached to the Agreement as Exhibits  
 21    A, B and C respectively, are hereby approved as to form.

22                 7. The Notice and Claim Forms shall be mailed to Class Members, at their last  
 23    known addresses, no later than 60 days after the date of the Court's preliminary approval of  
 24    the Settlement. The Settlement Administrator will re-mail any Notice and Claim Form  
 25    returned undeliverable with a forwarding address indicated. For any Notice and Claim Form  
 26    returned undeliverable without a forwarding address, the Settlement Administrator will make  
 27    one attempt to follow-up and re-mail the Notice and Claim Form, by performing an address  
 28    search using credit bureau and other public source data. The Full Notice shall be posted on a  
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1 settlement website at ~~www.XXXXXX.com~~ (the "Settlement Website") until the date of the  
 2 Final Hearing, as set forth and defined in paragraph 10 below, and made available for  
 3 mailing upon telephone request.

4       8. The Court finds that the Notice and Claim Form mailed to Settlement Class  
 5 Members, and the Full Notice, available on the Settlement Website constitute reasonable  
 6 notice under the circumstances and constitute valid, due, and sufficient notice to all members  
 7 of the Settlement Class of their rights and obligations, complying fully with the requirements  
 8 of California Code of Civil Procedure section 382, the California and United States  
 9 Constitutions, and any other applicable law. The Court further finds that the method of class  
 10 notice proposed in the Agreement constitutes reasonable notice under the circumstances and  
 11 constitutes valid, due, and sufficient notice to all members of the Settlement Class of their  
 12 rights and obligations, complying fully with the requirements of California Code of Civil  
 13 Procedure section 382, the California and United States Constitutions, and any other  
 14 applicable law.

15       9. Any member of the Settlement Class who does not file a valid and timely request  
 16 for exclusion will be bound by the Judgment and Order of Dismissal dismissing the Action  
 17 on the merits and with prejudice.

18       10. A hearing (the "Final Hearing") shall be held by the Court on July 11, 2008 at  
 19 9:30 a.m./p.m., to consider and determine whether the requirements for certification of the  
 20 Settlement Class have been met and whether the proposed settlement of the Action on the  
 21 terms set forth in the Agreement should be approved as fair, reasonable, adequate and in the  
 22 best interests of the Settlement Class Members; whether Class Counsel's fee and expense  
 23 application should be approved; and whether the Final Judgment approving the settlement  
 24 and dismissing the Action on the merits and with prejudice against the Class Representatives  
 25 and all Settlement Class Members should be entered.

26       11. The Final Hearing may, from time to time and without further notice to the  
 27 Settlement Class (except those who have filed timely and valid objections), be continued or  
 28 adjourned by Order of the Court.  
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1           12. Any Settlement Class Member who seeks to be excluded from the Settlement  
2 Class must send a request by letter or postcard by U.S. mail, postmarked no later than 30-  
3 ~~days prior to the Final Hearing, on or before June 2, 2008~~ to:

4 Matthew D. Davis  
Walkup, Melodia, Kelly & Schoenberger  
5 650 California Street, 26<sup>th</sup> Floor  
San Francisco, CA 94108  
6 Telephone: (415) 981-7210  
7 Attorney for Settlement Class

Lori A. Schechter  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105  
Telephone: (415) 268-7000  
Attorney for Defendants LensCrafters, Inc. and  
EYEXAM of California, Inc.

8           13. Objections by any Settlement Class Member to: (a) the certification of the  
9 Settlement Class and the proposed settlement contained in the Agreement and described in  
10 the Summary Notice; (b) the payment of fees and expenses to Class Counsel; and/or (c) entry  
11 of the Final Judgment, shall be heard and any papers submitted in support of said objections  
12 shall be considered by the Court at the Final Hearing only if, no later than ~~30 days prior to~~  
13 ~~the final hearing, on or before~~ June 2, 2008, such objector files with the Court a notice of  
14 such objections, states the basis for such objections, indicates that the objector is a member  
15 of the Settlement Class, and serves copies of the foregoing and all other papers in support of  
16 such objections on counsel identified in paragraph 12 above on or before June 2, 2008

June 27,

17        14. No later than July 2008, the parties shall file all papers in support of  
18 the application for final approval of the settlement, the application for payment of attorneys'  
19 fees and expenses, and/or any papers in response to any valid and timely objections with the  
20 Court, and shall serve copies of such papers upon each other and upon any objectors who  
21 have complied with the provisions of paragraph 13 of this Order.

22        15. Counsel for the parties are hereby authorized to utilize all reasonable  
23 procedures in connection with the administration of the settlement which are not materially  
24 inconsistent with either this Order or the terms of the Agreement.

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1 IT IS SO ORDERED.  
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3 Dated: 2-4, 2008



4 Honorable Richard A. Kramer  
5 Judge of the Superior Court of California,  
County of San Francisco  
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**PROOF OF SERVICE BY MAIL**  
(Code Civ. Proc. §§ 1013(a), 2015.5)

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**NOTICE OF ENTRY OF ORDER (1) PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, (2) CONDITIONALLY CERTIFYING A SETTLEMENT CLASS, (3) APPROVING FORM AND METHODS OF CLASS NOTICE, AND (4) SCHEDULING FINAL APPROVAL OF SETTLEMENT**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 , in accordance with Morrison & Foerster's ordinary business practices:

**Matthew D. Davis  
Walkup, Melodia, Kelly, Wecht & Schoenberger  
650 California Street, 26th Floor  
San Francisco, CA 94108-2702**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 5th day of February, 2008.

Kay Franklin

(typed)

(signature)